
Judiciary Committee

HJM 4006

Brief Description: Expressing concern about the USA PATRIOT Act.

Sponsors: Representatives Moeller, Chase, Tom, Dunshee, Hunter, Jarrett, Darneille, Uptegrove, McDermott, Hunt, Appleton, Kirby, Flannigan, Nixon, Williams, Ormsby, McCoy, Hasegawa, Springer and Simpson.

Brief Summary of Bill

- Affirms the State of Washington's opposition to global terrorism and its commitment to protecting civil liberties.
- Calls on Congress to pass the SAFE Act, which amends many of the surveillance and search-and-seizure provisions of the USA PATRIOT Act of 2001.

Hearing Date: 3/1/05

Staff: Christopher Abbott (786-7119).

Background:

The USA PATRIOT Act

In 2001, Congress passed the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act ("USA PATRIOT Act" or "PATRIOT Act") in response to the September 11, 2001, terrorist attacks in New York and Washington.

The PATRIOT Act addresses domestic security and international terrorism by requiring increased intergovernmental cooperation, restricting money laundering, tightening immigration and border security laws, providing money for terrorist victims, expanding criminal laws and penalties concerning terrorism, and allowing seizure of assets linked to terrorist groups. Additionally, Title II of the PATRIOT Act expands the government's authority to conduct investigations and surveillance of persons suspected of supporting terrorism.

The government's expanded investigation and search authority includes the following:

- *Roving Wiretap Authority* (Section 206). The Foreign Intelligence Surveillance Act of 1978 (FISA) appoints a special court to issue, among other things, warrants for foreign intelligence and terrorism investigations that need not specify the identity of the targeted person or the locations to be monitored. The PATRIOT Act further allows the government to require any

person to provide technical assistance or use of facilities to execute these warrants under certain circumstances.

- *Delayed Notice Warrants* (Section 213). Under the PATRIOT Act, federal law enforcement can execute a search warrant in any criminal investigation without providing immediate notice if the issuing court finds that immediate notice may have an "adverse result." These "sneak-and-peek" warrants may not be used to seize tangible property or most electronic or wire communications and must provide for notice within a reasonable time.
- *Library and Business Records* (Section 215). FISA allowed court orders requiring certain businesses, such as storage facilities and common carriers, to release their business records to federal agents if the court found that the information was relevant to a foreign intelligence or terrorism investigation. The PATRIOT Act expands this authority to require release of *any* "tangible thing," including books, records, and documents, from *any* person or entity, so long as the investigation is not based solely on First Amendment-protected activities.
- *Use of Pen Registers and "Trap-and-Trace" Devices* (Section 216). Pen registers are devices that record the numbers dialed by a surveillance target, and trap-and-trace devices record the telephone numbers of incoming calls. The PATRIOT Act permits use of these devices against citizens and permanent residents if the information is found relevant to a terrorism or foreign intelligence investigation not based solely on First Amendment-protected activities and expands their use by allowing the government to apply a court order authorizing use of these devices to any person whose assistance may facilitate execution of the order.
- *Nationwide Search Warrants* (Sections 219 and 220). Under the PATRIOT Act, federal magistrates may issue search warrants for any person inside or outside a federal judicial district so long as some domestic or international terrorism activities took place within the magistrate's district. Any geographic limitation on executing search warrants for electronic communications is eliminated.
- *National Security Letter Authority* (Section 505). Prior to 2001, FISA allowed the Federal Bureau of Investigation (FBI) to require phone companies and communications service providers to release transactional records and subscriber information if the FBI Director or a designee certified that the information was relevant to a foreign intelligence or terrorism investigation, and there were "specific and articulable facts" showing the target of the surveillance to be involved in clandestine intelligence or terrorism. The PATRIOT Act expanded this authority by eliminating the "specific and articulable facts" requirement, so long as the investigation is not based solely on First Amendment-protected activities.

The SAFE Act

In 2003, several members of Congress introduced the Security and Freedom Ensured Act (SAFE Act), which amends many of the surveillance provisions of the PATRIOT Act. The SAFE Act does the following:

- *Roving Wiretaps*. Requires that roving wiretaps specify either the place to be searched or the identity of the surveillance target and that monitoring of locations not specified in the warrant only be conducted when the targeted person is present.
- *Sneak-and-Peek Warrants*. Requires that the government show that specific and articulable facts exist indicating the targeted person is involved in foreign intelligence or terrorism before a court may issue a "sneak-and-peek" warrant, requires notice within seven days unless good cause is shown, and sunsets the provision at the end of 2005.

- *Library and Business Records.* Requires a court issuing an order authorizing a records release to first find that specific and articulable facts exist indicating the target of the investigation is involved in terrorism or is an agent of a foreign power.
- *Pen Register, Trap-and-Trace, and Nationwide Search Warrant Authority.* Sunsets these provisions at the end of 2005.
- *National Security Letter Authority.* Sunsets this provision at the end of 2005 and expressly exempts libraries from its requirements.

Summary of Bill:

The Legislature denounces terrorism and supports the need for enhanced domestic security consistent with protection of civil liberties and finds that preservation of constitutional rights and national security are not mutually exclusive. Therefore, the Legislature affirms its opposition to global terrorism and its commitment to protecting civil rights and calls on Congress to pass the SAFE Act.

Appropriation: None.

Fiscal Note: Not requested.